

1 KELLY A. JOHNSON
Acting Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice

3 MATTHEW A. FOGELSON
4 Trial Attorney
Environmental Enforcement Section
5 Environment & Natural Resources Division
United States Department of Justice
6 301 Howard Street, Suite 1050
San Francisco, CA 94105
7 Telephone: (415) 744-6470
Facsimile: (415) 744-6476
8 E-mail: Matthew.Fogelson@usdoj.gov

9 ELIZABETH F. KROOP
Trial Attorney
10 Environmental Enforcement Section
Environment & Natural Resources Division
11 United States Department of Justice
P.O. Box 7611; Ben Franklin Station
12 Washington, DC 20044
Telephone: (202) 514-5244
13 Facsimile: (202) 514-2583
E-mail: Elizabeth.Kroop@usdoj.gov

14 Additional Counsel Listed on Next Page

15
16
17 IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
18 WESTERN DIVISION

19 UNITED STATES OF
20 AMERICA,

21 Plaintiff,

22 v.

23 CARRIER CORPORATION,

24 Defendant.

Civil Action No.

COMPLAINT

1 DEBRA W. YANG
United States Attorney
2 Central District of California

3 SUZETTE CLOVER
State Bar No. 89066
4 Assistant U. S. Attorney
300 North Los Angeles Street
5 Los Angeles, CA 90012
Telephone: (213) 894-2442
6 Telecopier: (213) 894-7819
E-Mail: Suzette.Clover@usdoj.gov

7 Attorneys for the United States of America
8

9 COMPLAINT

10 Plaintiff, United States of America, by and through the undersigned
11 attorneys, by authority of the Attorney General, and acting at the request of the
12 Administrator of the Environmental Protection Agency hereby alleges as follows:

13 STATEMENT OF THE CASE

14 1. This is a civil action brought under Sections 106 and 107 of the
15 Comprehensive Environmental Response, Compensation, and Liability Act of
16 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and Section 7003 of
17 the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C.
18 § 6973, relating to releases and threatened releases of hazardous substances at the
19 Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4, Los
20 Angeles County, California (the "Site"), that may present an imminent and
21 substantial endangerment to health or welfare or the environment.

22 2. Plaintiff seeks: (a) performance of certain response actions by
23 Defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part
24 300 (as amended), pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606;
25 (b) reimbursement of certain costs incurred and to be incurred for response actions
26 at the Site by the United States Environmental Protection Agency ("EPA") and the
27 United States Department of Justice (hereinafter collectively referred to as the
28 "United States"), including accrued interest, pursuant to Section 107 of CERCLA,

1 42 U.S.C. § 9607; (c) a declaratory judgement that Defendant is liable for future
2 response costs incurred by the United States in connection with the Site, pursuant
3 to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2); (d) assessment of
4 statutory penalties against Defendant for its failure or refusal to comply with an
5 administrative order issued by EPA, pursuant to Sections 106(a) and 106(b)(1) of
6 CERCLA, 42 U.S.C. §§ 9606(a) and 9606(b)(1); (e) assessment of punitive
7 damages against Defendant for its failure or refusal to comply with an
8 administrative order issued by EPA, pursuant to Section 107(c)(3) of CERCLA, 42
9 U.S.C. § 9607(c)(3); and (f) performance of certain actions necessary to alleviate
10 the imminent and substantial endangerment to health or the environment relative to
11 the release and/or threatened release of hazardous wastes at the Site, pursuant to
12 Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

13 JURISDICTION AND VENUE

14 3. This Court has jurisdiction over the subject matter of this action and
15 over Defendant pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 6973(a), and
16 42 U.S.C. §§ 9606 and 9613(b).

17 4. Venue is proper in this District pursuant to 42 U.S.C. §§ 9606(a) and
18 9613(b), 42 U.S.C. § 6973, and 28 U.S.C. §§ 1391, because the claims arose and
19 the threatened and actual releases of hazardous substances occurred in the Western
20 Division of the Central District of California.

21 DEFENDANT

22 5. Defendant, Carrier Corporation (incorporated in Delaware), is a
23 "person" within the meaning of 42 U.S.C. § 9601(21).

24 THE SITE

25 6. The Puente Valley Operable Unit of the San Gabriel Valley Superfund
26 Site, Area 4, is a geographic area of groundwater contamination located in Los
27 Angeles County, California. Groundwater from this area is used in domestic and
28 industrial water supply in the San Gabriel Valley. In 1984, EPA designated this

1 Site for the National Priorities List, a list of hazardous waste sites posing the
2 greatest threat to health, welfare, or the environment, pursuant to Section 105 of
3 CERCLA, 42 U.S.C. § 9605. The Site was included on the National Priorities List
4 given the presence of chlorinated organic solvents throughout much of the
5 groundwater. See 49 Fed. Reg. 19480 (1984).

6 7. The Site is a facility within the meaning of Section 101(9) of
7 CERCLA, 42 U.S.C. § 9601(9).

8 8. Hazardous substances have been found at the Site within the meaning
9 of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited
10 to PCE and TCE.

11 9. There has been a "release" and/or threatened "release" of a hazardous
12 substance at or from the Site, within the meaning of Section 101(22) of CERCLA,
13 42 U.S.C. § 9601(22).

14 10. In 1998, EPA issued an Interim Record of Decision requiring remedial
15 action to contain contaminated shallow zone and intermediate zone groundwater
16 from the Site at the mouth of the Puente Valley.

17 11. On September 13, 2001, EPA issued a Unilateral Administrative
18 Order, U.S. EPA Docket No. 2001-20 ("Order"), to Defendant requiring that it
19 perform the interim remedial design and remedial action for the shallow
20 groundwater zone at the mouth of Puente Valley, as described in the Interim
21 Record of Decision.

22 12. June 14, 2005, EPA published an Explanation of Significant
23 Differences ("ESD") for the 1998 Interim Record of Decision, pursuant to Section
24 117(c) of CERCLA, 42 U.S.C. § 9617(c). The ESD requires the containment and
25 treatment of 1,4-dioxane, an additional contaminant of concern recently identified
26 at the Site. The ESD also requires the treatment of perchlorate under certain
27 circumstances.

28 13. The United States has incurred and continues to incur response costs

1 (including interest) in responding to releases or threatened releases of hazardous
2 substances at the Site, which costs are not inconsistent with the National
3 Contingency Plan.

4 FIRST CLAIM FOR RELIEF:
5 PERFORMANCE OF RESPONSE ACTIONS UNDER CERCLA

6 14. Paragraphs 1 through 13 are incorporated herein by reference.

7 15. Section 106 (a) of CERCLA, 42 U.S.C. § 9606(a), provides in
8 pertinent part:

9 [W]hen the President determines that there may be an
10 imminent and substantial endangerment to the public
11 health or welfare or the environment because of an actual
12 or threatened release of a hazardous substance from a
13 facility, he may require the Attorney General of the
14 United States to secure such relief as may be necessary to
15 abate such danger or threat

16 16. The President or his delegate, the Regional Administrator, has
17 determined that the release and/or threatened release at or from the Site poses an
18 imminent and substantial endangerment to the public health, welfare, or the
19 environment, and that response actions are necessary to abate the danger or threat
20 posed by the actual or threatened release of hazardous substances at or from the
21 Site.

22 17. Defendant is liable to perform response actions at the Site to abate this
23 danger or threat, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

24 SECOND CLAIM FOR RELIEF:
25 COST RECOVERY UNDER CERCLA

26 18. Paragraphs 1 through 13 are incorporated herein by reference.

27 19. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in
28 pertinent part:

(a) Notwithstanding any other provision or rule of law, and

1 subject only to the defenses set forth in subsection (b) of this
2 section...

3 (2) any person who at the time of disposal of any hazardous
4 substance owned or operated any facility at which such
5 hazardous substances were disposed of . . . from which there is a
6 release, or a threatened release which causes the incurrence of
7 response costs, of a hazardous substance . . . shall be liable for

8 (A) all costs of removal or remedial action incurred by
9 the United States Government or a State . . . not
10 inconsistent with the National Contingency Plan

11 20. Defendant is liable as a person who owned or operated a facility from
12 which there were releases of hazardous substances into the environment within the
13 meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

14 21. Defendant is jointly and severally liable for response costs (including
15 interest) incurred and to be incurred by the United States in connection with the
16 Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4.

17 22. The United States is entitled to a declaratory judgment that Defendant
18 is jointly and severally liable for such future response costs that the United States
19 may incur in connection with the Site, pursuant to Section 113(g)(2) of CERCLA,
20 42 U.S.C. § 9613(g)(2).

21 THIRD CLAIM FOR RELIEF:
22 CIVIL PENALTIES UNDER CERCLA

23 23. Paragraphs 1 through 13 are incorporated by reference herein.

24 24. Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), provides as
25 follows:

26 Any person who, without sufficient cause, willfully violates, or fails or
27 refuses to comply with, any order of the President under subsection (a)
28 of this section may, in an action brought in the appropriate United

1 States district court to enforce such order, be fined not more than
2 \$25,000 for each day in which such violation occurs or such failure to
3 comply continues.

4 25. Pursuant to the Debt Collection Improvement Act of 1996, Pub. L.
5 No. 103-134, 110 Stat. 1321, the maximum civil penalty ^{each day of} for noncompliance with
6 an administrative order that takes place from January 30, 1997 through March 15,
7 2004 is \$27,500, and after March 15, 2004 is \$32,500.

8 26. Defendant has, without sufficient cause, failed or refused to comply
9 with the terms of the Order issued by EPA, pursuant to CERCLA Section 106(a),
10 42 U.S.C. § 106(a).

11 27. Defendant is liable to the United States for a civil penalty of up to
12 \$27,500 per day for each day of its noncompliance with EPA's Order through
13 March 15, 2004, and up to \$32,500 per day for each day thereafter.

14 FOURTH CLAIM FOR RELIEF:
15 PUNITIVE DAMAGES UNDER CERCLA

16 28. Paragraphs 1 through 13 are incorporated herein by reference.

17 29. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provides in
18 pertinent past as follows:

19 If any person who is liable for a release or threat of release of a
20 hazardous substance fails without sufficient cause to properly provide
21 removal or remedial action upon order of the President pursuant to
22 Section 9604 or 9606 of this title, such person may be liable to the
23 United States for punitive damages in an amount at least equal to, and
24 not more than three times, the amount of any costs incurred by the
25 Fund as a result of such failure to take proper action.

26 30. Defendant has, without sufficient cause, failed to properly provide
27 removal or remedial action upon order of the President, pursuant to Section 106 of
28 CERCLA, 42 U.S.C. § 9606.

31. As a result of Defendant's failure to take such proper action, the United States has incurred costs.

32. Defendant is liable to the United States for punitive damages in an amount at least equal to and not more than three times the amount of the costs incurred by the United States as a result of Defendant's failure to take proper action.

FIFTH CLAIM FOR RELIEF:
PERFORMANCE OF RESPONSE ACTIONS UNDER RCRA

33. Paragraphs 1 through 13 are incorporated herein by reference.

34. Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), provides in pertinent part:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent or substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States . . . against any person who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both.

35. Hazardous wastes are present at the Site as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

36. Defendant's handling, storage, treatment, transportation, or disposal of solid or hazardous waste at the Site may present an imminent and substantial endangerment to health or the environment.

37. Defendant is liable for certain actions at the Site in order to abate the danger or threat to health or the environment, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully requests that this Court:

1. Order Defendant to perform response actions necessary to abate the danger or threat of a release of hazardous substances at or from the Site, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606;

2. Enter judgment in favor of the United States holding Defendant liable for all unreimbursed costs incurred by the United States with respect to the Site, plus accrued interest thereon, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607;

3. Enter a declaratory judgment on Defendant's liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2);

4. Enter judgment in favor of the United States for civil penalties of up to \$27,500 per day for each day of Defendant's noncompliance with EPA's Order through March 15, 2004, and up to \$32,500 per day for each day thereafter, pursuant to Sections 106(a) and 106(b)(1) of CERCLA, 42 U.S.C. §§ 9606(a) and 9606(b)(1);

5. Enter judgment in favor of the United States for punitive damages in an amount at least equal to and not more than three times the amount of costs incurred by the United States as a result of Defendant's failure to take proper action under the EPA Order, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3);

6. Order Defendant to take action necessary to abate the imminent and substantial endangerment to health or the environment pertaining to releases and threatened releases of hazardous waste at the Site, pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a); and

1 7. Grant the United States other relief as the Court deems appropriate.

2 Respectfully Submitted,

3
4 _____
5 KELLY A JOHNSON
6 Acting Assistant Attorney General
7 Environment & Natural Resources Division
8 U.S. Department of Justice
9 Washington, D.C. 20530

10 _____
11 MATTHEW A. FOGELSON
12 Trial Attorney
13 Environmental Enforcement Section
14 Environment & Natural Resources Division
15 U.S. Department of Justice
16 301 Howard Street
17 San Francisco, CA 94105

18 _____
19 ELIZABETH F. KROOP
20 Trial Attorney
21 Environmental Enforcement Section
22 Environment & Natural Resources Division
23 U.S. Department of Justice
24 P.O. Box 7611
25 Washington, DC 20044

26
27
28
Dated: